

Calendar No. 882

110TH CONGRESS
2D SESSION**S. 3268**

To amend the Commodity Exchange Act to prevent excessive price speculation with respect to energy commodities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 15, 2008

Mr. REID (for himself, Mr. DURBIN, Mr. DORGAN, Mrs. MURRAY, Mr. SCHUMER, Mr. CASEY, Ms. MIKULSKI, Mr. CARPER, Ms. KLOBUCHAR, Mr. BROWN, Mr. CARDIN, Mr. LEAHY, Mr. MENENDEZ, Mr. REED, Mr. LAUTENBERG, Mr. WYDEN, Mr. JOHNSON, and Mr. DODD) introduced the following bill; which was ordered read the first time

JULY 16, 2008

Read the second time and placed on the Calendar

A BILL

To amend the Commodity Exchange Act to prevent excessive price speculation with respect to energy commodities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Stop Excessive Energy Speculation Act of 2008”.

1 (b) TABLE OF CONTENTS.—The table of contents of
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definition of energy commodity.
- Sec. 3. Speculative limits and transparency of off-shore trading.
- Sec. 4. Authority of Commodity Futures Trading Commission with respect to
certain traders.
- Sec. 5. Working group of international regulators.
- Sec. 6. Elimination of manipulation and excessive speculation as cause of high
oil, gas, and energy prices.
- Sec. 7. Large over-the-counter transactions.
- Sec. 8. Index traders and swap dealers.
- Sec. 9. Disaggregation of index funds and other data in energy markets.
- Sec. 10. Additional Commodity Futures Trading Commission employees for im-
proved enforcement.
- Sec. 11. Working Group on Energy Markets.
- Sec. 12. Study of regulatory framework for energy markets.
- Sec. 13. Collection and analysis of information on energy commodities.
- Sec. 14. National natural gas market investigation.
- Sec. 15. Studies; reports.
- Sec. 16. Expedited procedures.

3 **SEC. 2. DEFINITION OF ENERGY COMMODITY.**

4 (a) DEFINITION OF ENERGY COMMODITY.—Section
 5 1a of the Commodity Exchange Act (7 U.S.C. 1a) is
 6 amended—

7 (1) by redesignating paragraphs (13) through
 8 (34) as paragraphs (14) through (35), respectively;
 9 and

10 (2) by inserting after paragraph (12) the fol-
 11 lowing:

12 “(13) ENERGY COMMODITY.—The term ‘energy
 13 commodity’ means—

14 “(A) a petroleum product; and

15 “(B) natural gas.”.

16 (b) CONFORMING AMENDMENTS.—

1 (1) Section 2(c)(2)(B)(i)(II)(cc) of the Com-
 2 modity Exchange Act (7 U.S.C.
 3 2(c)(2)(B)(i)(II)(cc)) is amended—

4 (A) in subitem (AA), by striking “section
 5 1a(20)” and inserting “section 1a(21)”; and

6 (B) in subitem (BB), by striking “section
 7 1a(20)” and inserting “section 1a(21)”.

8 (2) Section 13106(b)(1) of the Food, Conserva-
 9 tion, and Energy Act of 2008 is amended by striking
 10 “section 1a(32)” and inserting “section 1a”.

11 (3) Section 402 of the Legal Certainty for
 12 Bank Products Act of 2000 (7 U.S.C. 27) is amend-
 13 ed—

14 (A) in subsection (a)(7), by striking “sec-
 15 tion 1a(20)” and inserting “section 1a”; and

16 (B) in subsection (d)—

17 (i) in paragraph (1)(B), by striking
 18 “section 1a(33)” and inserting “section
 19 1a”; and

20 (ii) in paragraph (2)(D), by striking
 21 “section 1a(13)” and inserting “section
 22 1a”.

1 **SEC. 3. SPECULATIVE LIMITS AND TRANSPARENCY OF OFF-**
 2 **SHORE TRADING.**

3 Section 4 of the Commodity Exchange Act (7 U.S.C.
 4 6) is amended by adding at the end the following:

5 “(e) FOREIGN BOARDS OF TRADE.—

6 “(1) IN GENERAL.—The Commission may not
 7 permit a foreign board of trade to provide to the
 8 members of the foreign board of trade or other par-
 9 ticipants located in the United States, or otherwise
 10 subject to the jurisdiction of the Commission, direct
 11 access to the electronic trading and order matching
 12 system of the foreign board of trade with respect to
 13 an agreement, contract, or transaction in an energy
 14 commodity that settles against any price (including
 15 the daily or final settlement price) of 1 or more con-
 16 tracts listed for trading on a registered entity, un-
 17 less—

18 “(A) the foreign board of trade—

19 “(i) makes public daily trading infor-
 20 mation regarding the agreement, contract,
 21 or transaction that is comparable to the
 22 daily trading information published by the
 23 registered entity for the 1 or more con-
 24 tracts against which the foreign board of
 25 trade settles; and

1 “(ii) promptly notifies the Commission
2 of any change regarding—

3 “(I) the information that the for-
4 eign board of trade will make publicly
5 available;

6 “(II) the position limits, specula-
7 tion limits, and position accountability
8 provisions that the foreign board of
9 trade will adopt and enforce;

10 “(III) the position reductions re-
11 quired to prevent manipulation; and

12 “(IV) any other area of interest
13 expressed by the Commission to the
14 foreign board of trade; and

15 “(B) the foreign board of trade (or the for-
16 eign futures authority that oversees the foreign
17 board of trade)—

18 “(i) adopts position limits (including
19 related hedge exemption provisions), specu-
20 lation limits, or position accountability pro-
21 visions for speculators for the agreement,
22 contract, or transaction that are com-
23 parable to the position limits (including re-
24 lated hedge exemption provisions), specula-
25 tion limits, or position accountability provi-

sions adopted by the registered entity for the 1 or more contracts against which the foreign board of trade settles;

“(ii) has the authority to require or direct market participants to limit, reduce, or liquidate any position the foreign board of trade (or the foreign futures authority that oversees the foreign board of trade) determines to be necessary to prevent or reduce the threat of price manipulation, excessive speculation, price distortion, or disruption of delivery or the cash settlement process; and

“(iii) provides information to the Commission regarding the extent of legitimate and nonlegitimate hedge trading in the agreement, contract, or transaction that is comparable to the information that the Commission determines to be necessary to publish the commitments of traders report of the Commission for the 1 or more contracts against which the foreign board of trade settles.

“(2) EXISTING FOREIGN BOARDS OF TRADE.—

Paragraph (1) shall not be effective with respect to

1 any agreement, contract, or transaction in an energy
 2 commodity executed on a foreign board of trade to
 3 which the Commission had granted direct access
 4 permission prior to the date of enactment of this
 5 subsection until the date that is 180 days after the
 6 date of enactment of this subsection.”.

7 **SEC. 4. AUTHORITY OF COMMODITY FUTURES TRADING**
 8 **COMMISSION WITH RESPECT TO CERTAIN**
 9 **TRADERS.**

10 (a) IN GENERAL.—

11 (1) RESTRICTION OF FUTURES TRADING TO
 12 CONTRACT MARKETS OR DERIVATIVES TRANSACTION
 13 EXECUTION FACILITIES.—Section 4(b) of the Com-
 14 modity Exchange Act (7 U.S.C. 6(b)) is amended by
 15 inserting after the first sentence the following: “The
 16 Commission may adopt rules and regulations requir-
 17 ing the maintenance of books and records by any
 18 person that is located within the United States (in-
 19 cluding the territories and possessions of the United
 20 States) or that enters trades directly into the trade
 21 matching system of a foreign board of trade from
 22 the United States (including the territories and pos-
 23 sessions of the United States).”

1 (2) EXCESSIVE SPECULATION AS A BURDEN ON
2 INTERSTATE COMMERCE.—Section 4a of the Com-
3 modity Exchange Act (7 U.S.C. 6a) is amended—

4 (A) in subsection (e), in the second sen-
5 tence—

6 (i) by striking “this Act for any per-
7 son” and inserting “this Act for (1) any
8 person”; and

9 (ii) by inserting after “to section
10 5c(c)(1)” the following: “, and (2) any per-
11 son that is located within the United
12 States (including the territories and pos-
13 sessions of the United States) or that en-
14 ters trades directly into the trade matching
15 system of a foreign board of trade from
16 the United States (including the territories
17 and possessions of the United States) to
18 violate any bylaw, rule, regulation, or reso-
19 lution of any foreign board of trade or for-
20 eign futures authority fixing limits on the
21 amount of trading that may be carried out
22 or positions that may be held under any
23 contract of sale of an energy commodity
24 for future delivery or under any option on
25 such contract or energy commodity, that

1 settles against any price (including the
 2 daily or final settlement price) of 1 or
 3 more contracts listed for trading on a reg-
 4 istered entity”; and

5 (B) by adding at the end the following:

6 “(f) CONSULTATION.—Before taking any action
 7 under subsection (e), the Commission shall consult with
 8 the appropriate—

9 “(1) foreign board of trade; and

10 “(2) foreign futures authority.”.

11 (3) VIOLATIONS.—Section 9(a) of the Com-
 12modity Exchange Act (7 U.S.C. 13(a)) is amended
 13 by inserting “(including any person trading on a for-
 14eign board of trade)” after “Any person” each place
 15 it appears.

16 (4) EFFECT.—No amendment made by this
 17 subsection limits any of the otherwise applicable au-
 18thorities of the Commodity Futures Trading Com-
 19mission.

20 **SEC. 5. WORKING GROUP OF INTERNATIONAL REGU-**
 21 **LATORS.**

22 Section 4a of the Commodity Exchange Act (7 U.S.C.
 23 6a) (as amended by section 4(a)(2)(B)) is amended by
 24 adding at the end the following:

1 “(g) WORKING GROUP OF INTERNATIONAL REGU-
 2 LATORS.—Not later than 90 days after the date of enact-
 3 ment of this subsection, the Commission shall convene a
 4 working group of international regulators to develop uni-
 5 form international reporting and regulatory standards to
 6 ensure the protection of the energy futures markets from
 7 nonlegitimate hedge trading, excessive speculation, manip-
 8 ulation, location shopping, and lowest common dominator
 9 regulation, each of which pose systemic risks to all energy
 10 futures markets, countries, and consumers.”.

11 **SEC. 6. ELIMINATION OF MANIPULATION AND EXCESSIVE**
 12 **SPECULATION AS CAUSE OF HIGH OIL, GAS,**
 13 **AND ENERGY PRICES.**

14 Section 4a of the Commodity Exchange Act (7 U.S.C.
 15 6a) (as amended by section 5) is amended by adding at
 16 the end the following:

17 “(h) ELIMINATION OF EXCESSIVE SPECULATION
 18 AND NONLEGITIMATE HEDGE TRADING AS A CAUSE OF
 19 HIGH OIL, GAS, AND ENERGY PRICES.—

20 “(1) DEFINITION OF LEGITIMATE HEDGE
 21 TRADING.—

22 “(A) IN GENERAL.—The term ‘legitimate
 23 hedge trading’ means the conduct of trading
 24 that involves transactions by commercial pro-
 25 ducers and purchasers of actual physical petro-

1 leum and energy commodities for future deliv-
 2 ery and the direct counterparties to such trades
 3 (regardless of whether the counterparties are
 4 commercial producers or purchasers).

5 “(B) INCLUSION.—To the extent a com-
 6 mercial producer or purchaser of an actual
 7 physical energy commodity for future delivery
 8 trades with an intermediary (referred to in this
 9 subparagraph as an ‘initial trade’), each subse-
 10 quent trade by the intermediary arising solely
 11 due to the initial trade and that directly results
 12 from such initial trade (referred to in this sub-
 13 paragraph as a ‘follow-on trade’) shall be con-
 14 sidered to be the conduct of ‘legitimate hedge
 15 trading’ if each follow-on trade executed by the
 16 intermediary is—

17 “(i) done proximate to the initial
 18 trade; and

19 “(ii) in the aggregate, economically
 20 the same in size and substance as the ini-
 21 tial trade.

22 “(2) IDENTIFICATION OF LEGITIMATE HEDGE
 23 TRADING.—In carrying out this Act, the Commission
 24 shall distinguish between—

25 “(A) legitimate hedge trading; and

1 “(B) all other trading in energy commod-
2 ities.

3 “(3) TYPE OF TRADING.—Notwithstanding any
4 other provision of this Act, the Commission shall
5 modify (or delegate any appropriate entity to mod-
6 ify) such definitions, classifications, and data collec-
7 tion under this Act as are necessary to ensure that
8 all direct and indirect parties and counterparties to
9 all trades in the energy commodities market are
10 clearly identified for all purposes as engaging in—

11 “(A) legitimate hedge trading; or

12 “(B) any other type of trading.

13 “(4) ELIMINATION OF EXCESSIVE SPECULA-
14 TION.—

15 “(A) IN GENERAL.—Notwithstanding any
16 other provision of this Act, the Commission
17 shall review all regulations, rules, exemptions,
18 exclusions, guidance, no action letters, orders,
19 and other actions taken by or on behalf of the
20 Commission (including any action or inaction
21 taken pursuant to delegated authority by an ex-
22 change, self-regulatory organization, or any
23 other entity) regarding all energy futures mar-
24 ket participants or market activity (referred to

1 in this subsection individually as a ‘prior ac-
2 tion’) to ensure that—

3 “(i) legitimate hedge trading is pro-
4 tected and promoted; and

5 “(ii) excessive speculation is elimi-
6 nated.

7 “(B) PRIOR ACTION.—

8 “(i) IN GENERAL.—The Commission
9 shall consider modifying or revoking the
10 application after the date of enactment of
11 this subsection of any prior action taken
12 by the Commission (including any prior ac-
13 tion taken pursuant to delegated authority
14 by any other entity) with respect to any
15 trade on any market, exchange, foreign
16 board of trade, swap or swap transaction,
17 index or index market participant or trade,
18 hedge fund, pension fund, and any other
19 transaction, trade, trader, or petroleum or
20 energy futures market activity unless the
21 Commission affirmatively determines that
22 such prior action will protect and promote
23 legitimate hedge trading and does not per-
24 mit or encourage excessive speculation.

1 “(ii) REVOCATION.—In carrying out
2 this subparagraph, the Commission shall
3 consider modifying or revoking the results
4 of each prior action that, in whole or in
5 part, has the direct or indirect affect of
6 limiting, reducing, or eliminating the filing
7 of any report or data regarding any direct
8 or indirect trade or trader, including the
9 filing of large trader reports.

10 “(C) SPECULATIVE POSITION LIMITS AP-
11 PLICABLE TO NONLEGITIMATE HEDGE TRADING
12 IN ENERGY COMMODITIES AND DERIVATIVES.—

13 “(i) SPECULATIVE POSITION LIM-
14 ITS.—

15 “(I) IN GENERAL.—Not later
16 than 30 days after the date of enact-
17 ment of this subsection, the Commis-
18 sion shall impose, by rule, regulation,
19 or order, speculative position limits on
20 trading that is not legitimate hedge
21 trading.

22 “(II) APPLICATION.—The Com-
23 mission shall apply the limits imposed
24 under subclause (I) to any person who
25 executes accounts, agreements, or

1 transactions involving an energy com-
2 modity for the own account of the
3 person and to any person for whom
4 an agent in fact or substance executes
5 accounts, agreements, or transactions
6 involving an energy commodity, on a
7 registered entity or in covered over-
8 the-counter trading.

9 “(ii) ADVISORY GROUP.—

10 “(I) IN GENERAL.—Not later
11 than 30 days after the date of enact-
12 ment of this subsection, the Commis-
13 sion shall convene an advisory group
14 primarily consisting of commercial
15 producers and purchasers of actual
16 physical energy commodities for fu-
17 ture delivery.

18 “(II) RECOMMENDATIONS.—Not
19 later than 60 days after the date on
20 which the advisory group is convened
21 under subclause (I), and annually
22 thereafter, the advisory group shall
23 submit to the Commission rec-
24 ommendations regarding an appro-
25 priate level for position limits—

1 “(aa) that are designed for
2 traders or entities that are not
3 legitimate hedge traders; and

4 “(bb) to replace the position
5 limits imposed by the Commis-
6 sion under clause (i)(I).

7 “(III) APPLICABILITY OF
8 FACA.—The advisory group shall be
9 subject to the Federal Advisory Com-
10 mittee Act (5 U.S.C. App.).

11 “(iii) REVIEW OF RECOMMENDA-
12 TIONS.—Not later than 270 days after the
13 date of enactment of this subsection, the
14 Commission shall—

15 “(I) analyze and review the rec-
16 ommendations submitted by the advi-
17 sory group under clause (ii)(II); and

18 “(II) submit to the appropriate
19 committees of Congress a report de-
20 scribing each recommendation (includ-
21 ing each modification to the statutory
22 authority of the Commission that the
23 Commission determines to be nec-
24 essary to effectuate each recommenda-
25 tion).

1 “(iv) RULEMAKING.—

2 “(I) IN GENERAL.—Not later
3 than 18 months after the date of en-
4 actment of this subsection, the Com-
5 mission shall promulgate a final rule
6 that establishes speculative position
7 limits—

8 “(aa) for any person en-
9 gaged in nonlegitimate hedge
10 trading of an energy commodity;
11 and

12 “(bb) that are consistent
13 with this Act.

14 “(II) EFFECTIVE DATE.—The
15 final rule described in subclause (I)
16 shall take effect on the date that is 30
17 days after the date on which the Com-
18 mission promulgates the final rule.

19 “(v) DEVELOPMENT OF METHOD-
20 OLOGY.—

21 “(I) IN GENERAL.—Not later
22 than 180 days after the date of enact-
23 ment of this subsection, the Commis-
24 sion shall propose a methodology to
25 determine and set aggregate specula-

1 tive position limits at the control enti-
2 ty level for all nonlegitimate traders of
3 energy commodities—

4 “(aa) on designated contract
5 markets;

6 “(bb) on derivatives trans-
7 action execution facilities; and

8 “(cc) in over-the-counter
9 commodity derivatives.

10 “(II) REPORT.—Not later than
11 180 days after the date of enactment
12 of this subsection, the Commission
13 shall submit to the appropriate com-
14 mittees of Congress a report that con-
15 tains—

16 “(aa) any recommendations
17 regarding any additional statu-
18 tory authority that the Commis-
19 sion determines to be necessary
20 for the imposition of the specula-
21 tive position limits described in
22 subclause (I); and

23 “(bb) a description of the
24 resources that the Commission
25 considers to be necessary to im-

1 plement the speculative position
2 limits.

3 “(D) MAXIMUM LEVEL OF SPECULATIVE
4 POSITION LIMITS.—

5 “(i) IN GENERAL.—In establishing
6 speculative position limits under this sec-
7 tion (including subparagraph (C)(iv)), the
8 Commission shall set the limits at the max-
9 imum level practicable—

10 “(I) to ensure sufficient market
11 liquidity for the conduct of legitimate
12 hedging activities;

13 “(II) to ensure that price dis-
14 covery is not disrupted;

15 “(III) to protect and promote le-
16 gitimate hedge trading;

17 “(IV) to minimize nonlegitimate
18 hedge trading; and

19 “(V) to eliminate excess specula-
20 tion.

21 “(ii) EFFECT.—

22 “(I) IN GENERAL.—Nothing in
23 this subparagraph modifies the spot
24 month position limitation of 3,000

1 contracts that is designed to prevent a
 2 corner or squeeze at the delivery date.

3 “(II) COMMISSION ACTION.—If
 4 the Commission sets position limits
 5 under clause (i) that are different
 6 from the spot month position limit de-
 7 scribed in subclause (I), the Commis-
 8 sion shall include in the report re-
 9 quired under subparagraph (C)(v)(II)
 10 an analysis describing the reasons for
 11 the position limits.”.

12 **SEC. 7. LARGE OVER-THE-COUNTER TRANSACTIONS.**

13 Section 2 of the Commodity Exchange Act (7 U.S.C.
 14 2) is amended by adding at the end the following:

15 “(j) OVER-THE-COUNTER TRANSACTIONS.—

16 “(1) DEFINITIONS.—In this subsection:

17 “(A) COVERED OVER-THE-COUNTER
 18 TRANSACTION.—The term ‘covered over-the-
 19 counter transaction’ means an over-the-counter
 20 transaction the reporting of which is required
 21 by the Commission as the result of a determina-
 22 tion made under paragraph (3)(C).

23 “(B) COVERED PERSON.—The term ‘cov-
 24 ered person’ means a person that enters into a
 25 covered over-the-counter transaction.

“(C) MAJOR MARKET DISTURBANCE.—The term ‘major market disturbance’ means any disturbance in a commodity market that disrupts the liquidity and price discovery function of that market from accurately reflecting the forces of supply and demand for a commodity, including—

“(i) a threatened or actual market manipulation or corner;

“(ii) excessive speculation;

“(iii) nonlegitimate hedge trading; and

“(iv) any action of the United States or a foreign government that affects a commodity.

“(D) MARKET DISTURBANCE.—The term ‘market disturbance’ shall be interpreted in accordance with section 8a(9)).

“(E) OVER-THE-COUNTER TRANSACTION.—The term ‘over-the-counter transaction’ means a contract, agreement, or transaction in a petroleum or energy commodity that is—

“(i) entered into only between persons that are eligible contract participants at

1 the time the persons enter into the agree-
2 ment, contract, or transaction;

3 “(ii) not entered into on a trading fa-
4 cility; and

5 “(iii) not a sale of any cash com-
6 modity for deferred shipment or delivery.

7 “(2) COMMISSION OVERSIGHT AUTHORITY.—

8 “(A) IN GENERAL.—In the case of a major
9 market disturbance, as determined by the Com-
10 mission, the Commission may require any trad-
11 er subject to the reporting requirements de-
12 scribed in paragraph (3) to take such action as
13 the Commission considers to be necessary to
14 maintain or restore orderly trading in any con-
15 tract listed for trading on a registered entity,
16 including—

17 “(i) the liquidation of any over-the-
18 counter transaction; and

19 “(ii) the fixing of any limit that may
20 apply to a market position involving any
21 over-the-counter transaction acquired in
22 good faith before the date of the deter-
23 mination of the Commission.

24 “(B) JUDICIAL REVIEW.—Any action
25 taken by the Commission under subparagraph

1 (A) shall be subject to judicial review carried
2 out in accordance with section 8a(9).

3 “(3) REPORTING; RECORDKEEPING.—

4 “(A) IN GENERAL.—The Commission shall
5 require each covered person to submit to the
6 Commission a report—

7 “(i) at such time and in such manner
8 as the Commission determines to be appro-
9 priate; and

10 “(ii) containing the information re-
11 quired under subparagraph (B) to assist
12 the Commission in detecting and pre-
13 venting potential price manipulation of, or
14 excessive speculation in, any contract listed
15 for trading on a registered entity.

16 “(B) CONTENTS OF REPORT.—A report re-
17 quired under subparagraph (A) shall contain—

18 “(i) information describing large trad-
19 ing positions of the covered person ob-
20 tained through 1 or more over-the-counter
21 transactions that involve—

22 “(I) substantial quantities of a
23 commodity in the cash market; or

1 “(II) substantial positions, in-
2 vestments, or trades in agreements or
3 contracts relating to the commodity;

4 “(ii) any other information relating to
5 each covered over-the-counter transaction
6 carried out by the covered person that the
7 Commission determines to be necessary to
8 accomplish the purposes described in sub-
9 paragraph (A); and

10 “(iii) information distinguishing legiti-
11 mate hedge trading from nonlegitimate
12 hedge trading.

13 “(C) DETERMINATION OF COVERED OVER-
14 THE-COUNTER TRANSACTIONS.—

15 “(i) IN GENERAL.—The Commission
16 shall identify each large over-the-counter
17 transaction or class of large over-the-
18 counter transactions the reporting of which
19 the Commission determines to be appro-
20 priate to assist the Commission in detect-
21 ing and preventing potential price manipu-
22 lation of, or excessive speculation in, any
23 contract listed for trading on a registered
24 entity.

1 “(ii) MANDATORY FACTORS FOR DE-
2 TERMINATIONS.—

3 “(I) IN GENERAL.—In carrying
4 out a determination under clause (i),
5 the Commission shall consider the ex-
6 tent to which each factor described in
7 subclause (II) applies.

8 “(II) FACTORS.—The factors re-
9 quired for carrying out a determina-
10 tion under clause (i) include wheth-
11 er—

12 “(aa) a standardized agree-
13 ment is used to execute the over-
14 the-counter transaction;

15 “(bb) the over-the-counter
16 transaction settles against any
17 price (including the daily or final
18 settlement price) of 1 or more
19 contracts listed for trading on a
20 registered entity;

21 “(cc) the price of the over-
22 the-counter transaction is re-
23 ported to a third party, pub-
24 lished, or otherwise disseminated;

1 “(dd) the price of the over-
 2 the-counter transaction is ref-
 3 erenced in any other transaction;

4 “(ee) there is a significant
 5 volume of the over-the-counter
 6 transaction or class of over-the-
 7 counter transactions; and

8 “(ff) there is any other fac-
 9 tor that the Commission deter-
 10 mines to be appropriate.

11 “(D) RECORDKEEPING.—The Commission,
 12 by rule, shall require each covered person—

13 “(i) in accordance with section 4i, to
 14 maintain such records as directed by the
 15 Commission for a period of 5 years, or
 16 longer, if directed by the Commission; and

17 “(ii) to provide such records upon re-
 18 quest to the Commission or the Depart-
 19 ment of Justice.

20 “(4) PROTECTION OF PROPRIETARY INFORMA-
 21 TION.—In carrying out this subsection, the Commis-
 22 sion may not—

23 “(A) require the real-time publication of
 24 any proprietary information;

1 “(B) prohibit the commercial sale or li-
 2 censing of any real-time proprietary informa-
 3 tion; and

4 “(C) except as provided in section 8, pub-
 5 licly disclose any information relating to any
 6 market position, business transaction, trade se-
 7 cret, or name of any customer of a covered per-
 8 son.

9 “(5) APPLICABILITY.—Notwithstanding sub-
 10 sections (g) and (h), and any exemption issued by
 11 the Commission for any energy commodity, each
 12 over-the-counter transaction shall be subject to this
 13 subsection.

14 “(6) SAVINGS CLAUSE.—Nothing in this sub-
 15 section modifies or alters—

16 “(A) the guidance of the Commission; or

17 “(B) any applicable requirements with re-
 18 spect the disclosure of proprietary informa-
 19 tion.”.

20 **SEC. 8. INDEX TRADERS AND SWAP DEALERS.**

21 Section 4 of the Commodity Exchange Act (7 U.S.C.
 22 6) (as amended by section 3) is amended by adding at
 23 the end the following:

1 “(f) INDEX TRADERS AND SWAP DEALERS.—Not
2 later than 60 days after the date of enactment of this sub-
3 section, the Commission shall—

4 “(1) routinely require detailed reporting from
5 index traders and swap dealers in markets under the
6 jurisdiction of the Commission;

7 “(2) reclassify the types of traders for regu-
8 latory and reporting purposes to distinguish between
9 index traders and swaps dealers;

10 “(3) review the trading practices for index trad-
11 ers in markets under the jurisdiction of the Commis-
12 sion—

13 “(A) to ensure that index trading is not
14 adversely impacting the price discovery process;
15 and

16 “(B) to determine whether different prac-
17 tices or regulations should be implemented; and

18 “(4) ensure, to the maximum extent prac-
19 ticable, that the reports required under this sub-
20 section distinguish between legitimate and nonlegiti-
21 mate hedge trading.”.

1 **SEC. 9. DISAGGREGATION OF INDEX FUNDS AND OTHER**
 2 **DATA IN ENERGY MARKETS.**

3 Section 4 of the Commodity Exchange Act (7 U.S.C.
 4 6) (as amended by section 8) is amended by adding at
 5 the end the following:

6 “(g) DISAGGREGATION OF INDEX FUNDS AND
 7 OTHER DATA IN ENERGY MARKETS.—The Commission
 8 shall disaggregate and make public monthly—

9 “(1) the number of positions and total value of
 10 index funds and other passive, long-only positions in
 11 energy markets; and

12 “(2) data on speculative positions relative to
 13 bona fide physical hedgers in those markets.”.

14 **SEC. 10. ADDITIONAL COMMODITY FUTURES TRADING**
 15 **COMMISSION EMPLOYEES FOR IMPROVED**
 16 **ENFORCEMENT.**

17 Section 2(a)(7) of the Commodity Exchange Act (7
 18 U.S.C. 2(a)(7)) is amended by adding at the end the fol-
 19 lowing:

20 “(D) ADDITIONAL EMPLOYEES.—As soon
 21 as practicable after the date of enactment of
 22 this subparagraph, the Commission shall ap-
 23 point at least 100 full-time employees (in addi-
 24 tion to the employees employed by the Commis-
 25 sion as of the date of enactment of this sub-
 26 paragraph)—

1 “(i) to increase the public trans-
2 parency of operations in energy futures
3 markets;

4 “(ii) to improve the enforcement of
5 this Act in those markets; and

6 “(iii) to carry out such other duties as
7 are prescribed by the Commission.”.

8 **SEC. 11. WORKING GROUP ON ENERGY MARKETS.**

9 (a) ESTABLISHMENT.—There is established a Work-
10 ing Group on Energy Markets.

11 (b) COMPOSITION.—The Working Group shall be
12 composed of—

13 (1) the Secretary of Energy (referred to in this
14 section as the “Secretary”);

15 (2) the Secretary of the Treasury;

16 (3) the Chairman of the Federal Energy Regu-
17 latory Commission;

18 (4) the Chairman of Federal Trade Commis-
19 sion;

20 (5) the Chairman of the Securities and Ex-
21 change Commission;

22 (6) the Chairman of the Commodity Futures
23 Trading Commission; and

24 (7) the Administrator of the Energy Informa-
25 tion Administration.

1 (c) CHAIRPERSON.—

2 (1) INITIAL CHAIRPERSON.—The Secretary
3 shall serve as the Chairperson of the Working Group
4 for the 1-year period beginning on the date of enact-
5 ment of this Act.

6 (2) ROTATION OF CHAIRPERSONS.—For each 1-
7 year period following the period described in para-
8 graph (1), each individual described in subsection
9 (b) shall serve as the Chairperson of the Working
10 Group in the order corresponding to which the indi-
11 vidual is described in that subsection.

12 (d) PURPOSE AND FUNCTION.—The Working Group
13 shall—

14 (1) investigate the effect of speculation in en-
15 ergy commodities on energy prices and the energy
16 security of the United States;

17 (2) recommend to the President and Congress
18 laws (including regulations) that may be needed to
19 prevent excessive speculation in energy commodities
20 to prevent or minimize the adverse impact of high
21 energy prices on consumers and the economy of the
22 United States; and

23 (3) review energy security considerations posed
24 by developments in international energy markets.

1 (e) ADMINISTRATION.—The Secretary shall provide
 2 the Working Group with such administrative and support
 3 services as may be necessary for the performance of the
 4 functions of the Working Group.

5 (f) COOPERATION OF OTHER AGENCIES.—The heads
 6 of Executive departments, agencies, and independent in-
 7 strumentalities shall, to the extent permitted by law, pro-
 8 vide the Working Group with such information as the
 9 Working Group requires to carry out this section.

10 (g) CONSULTATION.—The Working Group shall con-
 11 sult, as appropriate, with representatives of the various
 12 exchanges, clearinghouses, self-regulatory bodies, other
 13 major market participants, consumers, and the general
 14 public.

15 **SEC. 12. STUDY OF REGULATORY FRAMEWORK FOR EN-**
 16 **ERGY MARKETS.**

17 (a) STUDY.—The Working Group established under
 18 section 11(a) shall conduct a study to—

19 (1) identify the factors that affect the pricing of
 20 crude oil and refined petroleum products, including
 21 an examination of the effects of market speculation
 22 on prices; and

23 (2) review and assess the roles, missions, and
 24 structures of relevant Federal agencies, examine
 25 interagency coordination, and identify and assess the

1 gaps that need to be filled for the Federal Govern-
2 ment to effectively oversee and regulate markets
3 critical to the energy security of the United States.

4 (b) ELEMENTS OF STUDY.—The study shall in-
5 clude—

6 (1) an examination of price formation with re-
7 spect to crude oil and refined petroleum products;

8 (2) an examination of relevant international
9 regulatory regimes; and

10 (3) an examination of the degree to which
11 changes in energy market transparency, liquidity,
12 and structure have influenced or driven abuse, ma-
13 nipulation, excessive speculation, or inefficient price
14 formation.

15 (c) REPORT AND RECOMMENDATIONS.—Not later
16 than 1 year after the date of enactment of this Act, the
17 Secretary of Energy shall submit to the appropriate com-
18 mittees of Congress a report that—

19 (1) describes the results of the study; and

20 (2) provides options and the recommendations
21 of the Working Group for appropriate Federal co-
22 ordination of oversight and regulatory actions to en-
23 sure transparency of crude oil and refined petroleum
24 product pricing and the elimination of excessive
25 speculation.

1 (d) AUTHORIZATION OF APPROPRIATIONS.—There
 2 are authorized to be appropriated such sums as are nec-
 3 essary to carry out this section.

4 **SEC. 13. COLLECTION AND ANALYSIS OF INFORMATION ON**
 5 **ENERGY COMMODITIES.**

6 (a) ACCURATE AND COMPLETE INFORMATION ON
 7 ENERGY PRODUCING COMPANIES.—Section 205(h)(1) of
 8 the Department of Energy Organization Act (42 U.S.C.
 9 7135(h)(1)) is amended by adding at the end the fol-
 10 lowing:

11 “(C) INFORMATION ON ENERGY-PRO-
 12 DUCING COMPANIES.—Notwithstanding any
 13 other provision of law, the head of each Federal
 14 department or agency shall provide to the Ad-
 15 ministrator, on the request of the Adminis-
 16 trator, such information as the Administrator
 17 may require to identify each energy-producing
 18 company.”.

19 (b) ENHANCED DATA ON OWNERSHIP OF CRITICAL
 20 ENERGY COMMODITIES.—Section 205 of the Department
 21 of Energy Organization Act (42 U.S.C. 7135) is amended
 22 by adding at the end the following:

23 “(n) COLLECTION OF INFORMATION ON OWNERSHIP
 24 OF ENERGY COMMODITIES.—

1 “(1) IN GENERAL.—To ensure transparency of
2 information with respect to critical energy infra-
3 structure and product ownership in the United
4 States, the Administrator shall collect on a weekly
5 basis information identifying the ownership of all
6 commercially held oil and natural gas inventories in
7 the United States.

8 “(2) COMPANY-SPECIFIC DATA.—The informa-
9 tion shall include company-specific data, including—

10 “(A) volumes of product under ownership;
11 and

12 “(B) storage and transportation capacity
13 (including owned and leased capacity).

14 “(3) PROTECTION OF PROPRIETARY INFORMA-
15 TION.—Section 11(d) of the Energy Supply and En-
16 vironmental Coordination Act of 1974 (15 U.S.C.
17 796(d)) shall apply to information collected under
18 this section.

19 “(o) MONTHLY REPORTING ON ENERGY COMMODITY
20 TRANSACTIONS.—

21 “(1) IN GENERAL.—In accordance with para-
22 graph (2), to improve the ability to evaluate the en-
23 ergy security of the United States, any person hold-
24 ing or controlling energy futures contracts or energy
25 commodity swaps (as defined in section 202 of the

1 Energy Policy and Conservation Act) at a level to be
 2 determined by the Secretary for which the under-
 3 lying energy commodity is physically delivered within
 4 the United States shall report on a monthly basis,
 5 with respect to the energy commodities and the by-
 6 products of the energy commodities—

7 “(A) the quantity of physical stocks owned;

8 “(B) the quantity of fixed price purchase
 9 commitments open;

10 “(C) the quantity of fixed price sales com-
 11 mitments open;

12 “(D) the physical storage capacity owned
 13 or leased; and

14 “(E) such other information as the Sec-
 15 retary determines is necessary to provide ade-
 16 quate transparency with respect to entities that
 17 control critical energy assets in the United
 18 States.

19 “(2) USE OF DATA.—Any data collected under
 20 paragraph (1) shall not be made public in a manner
 21 that is inconsistent with this Act.

22 “(p) FINANCIAL MARKET ANALYSIS OFFICE.—

23 “(1) ESTABLISHMENT.—There shall be within
 24 the Energy Information Administration a Financial
 25 Market Analysis Office, headed by a director, who

1 shall report directly to the Administrator of the En-
 2 ergy Information Administration.

3 “(2) DUTIES.—The Office shall be responsible
 4 for analysis of the financial aspects of energy mar-
 5 kets.

6 “(3) ANALYSES.—The Administrator of the En-
 7 ergy Information Administration shall take analyses
 8 by the Office into account in conducting analyses
 9 and forecasting of energy prices.”.

10 (c) CONFORMING AMENDMENT.—Section 645 of the
 11 Department of Energy Organization Act (42 U.S.C. 7255)
 12 is amended by inserting “(15 U.S.C. 3301 et seq.) and
 13 the Natural Gas Act (15 U.S.C. 717 et seq.)” after “Nat-
 14 ural Gas Policy Act of 1978”.

15 **SEC. 14. NATIONAL NATURAL GAS MARKET INVESTIGA-**
 16 **TION.**

17 (a) IN GENERAL.—Not later than 30 days after the
 18 date of enactment of this Act, in order to ensure the integ-
 19 rity of natural gas markets, the Federal Energy Regu-
 20 latory Commission (referred to in this section as the
 21 “Commission”) shall commence an investigation into the
 22 role of financial institutions in natural gas markets, in-
 23 cluding—

24 (1) trends in investment in natural gas storage,
 25 transportation capacity, and pipeline infrastructure;

1 (2) factors contributing to potential effects on
2 wholesale natural gas prices, including the mecha-
3 nisms covered by physical natural gas supply con-
4 tracts;

5 (3) the character and number of positions held
6 in related financial markets; and

7 (4) any international considerations the Com-
8 mission considers relevant.

9 (b) ASSESSMENT.—The Commission may include in
10 the investigation an assessment of real-time market dy-
11 namics during the 2008 winter heating season.

12 (c) REQUIRED DATA.—Each Federal department and
13 agency shall comply with any request from the Commis-
14 sion for records, papers, and information in the possession
15 of the department or agency relating to any agreement,
16 contract, or transaction for the sale of an energy com-
17 modity for future delivery in interstate or foreign com-
18 merce, or any energy commodity swap.

19 (d) REPORTS.—Not later than 270 days after the
20 date of enactment of this Act, the Commission shall sub-
21 mit to the Committee on Energy and Natural Resources
22 of the Senate and the Committee on Energy and Com-
23 merce of the House of Representatives a report on the
24 findings, conclusions, and recommendations of the inves-
25 tigation conducted under this section.

1 (e) ADDITIONAL INVESTIGATIONS.—On an annual
 2 basis and during any other period the Commission deter-
 3 mines necessary, the Commission shall—

4 (1) conduct an investigation that is similar to
 5 the investigation required under subsections (a)
 6 through (c); and

7 (2) submit to the Committee on Energy and
 8 Natural Resources of the Senate and the Committee
 9 on Energy and Commerce of the House of Rep-
 10 resentatives a report on the findings, conclusions,
 11 and recommendations of the investigation.

12 (f) AUTHORIZATION OF APPROPRIATIONS.—There
 13 are authorized to be appropriated such sums as are nec-
 14 essary to carry out this section.

15 **SEC. 15. STUDIES; REPORTS.**

16 (a) STUDY RELATING TO INTERNATIONAL REGULA-
 17 TION OF ENERGY COMMODITY MARKETS.—

18 (1) IN GENERAL.—The Comptroller General of
 19 the United States shall conduct a study of the inter-
 20 national regime for regulating the trading of energy
 21 commodity futures and derivatives.

22 (2) ANALYSIS.—The study shall include an
 23 analysis of, at a minimum—

24 (A) key common features and differences
 25 among countries in the regulation of energy

1 commodity trading, including with respect to
2 market oversight and enforcement standards
3 and activities;

4 (B) variations among countries with re-
5 spect to the use of position limits, account-
6 ability limits, or other thresholds to detect and
7 prevent price manipulation, excessive specula-
8 tion, or other unfair trading practices;

9 (C) variations in practices regarding the
10 differentiation of commercial and noncommer-
11 cial trading;

12 (D) agreements and practices for sharing
13 market and trading data among regulatory bod-
14 ies and among individual regulators and the en-
15 tities that the bodies and regulators oversee;
16 and

17 (E) agreements and practices for facili-
18 tating international cooperation on market over-
19 sight, compliance, and enforcement.

20 (3) REPORT.—Not later than 1 year after the
21 date of enactment of this Act, the Comptroller Gen-
22 eral shall submit to the appropriate committees of
23 Congress a report that—

24 (A) describes the results of the study;

1 (B) addresses the effects of excessive spec-
 2 ulation and energy price volatility on energy fu-
 3 tures; and

4 (C) provides recommendations to improve
 5 openness, transparency, and other necessary
 6 elements of a properly functioning market in a
 7 manner that protects consumers in the United
 8 States.

9 (b) STUDY RELATING TO EFFECTS OF NONCOMMER-
 10 CIAL SPECULATORS ON ENERGY FUTURES MARKETS AND
 11 ENERGY PRICES.—

12 (1) STUDY.—The Comptroller General of the
 13 United States shall conduct a study of the effects of
 14 noncommercial speculators on energy futures mar-
 15 kets and energy prices.

16 (2) ANALYSIS.—The study shall include an
 17 analysis of, at a minimum—

18 (A) the effect of increased amounts of cap-
 19 ital in energy futures markets;

20 (B) the impact of the roll-over of positions
 21 by index fund traders and swap dealers on en-
 22 ergy futures markets and energy prices; and

23 (C) the extent to which each factor de-
 24 scribed in subparagraphs (A) and (B) and non-
 25 commercial speculators—

1 (i) affect—

2 (I) the pricing of energy com-
3 modities; and

4 (II) risk management functions;
5 and

6 (ii) contribute to economically efficient
7 price discovery.

8 (3) REPORT.—Not later than 2 years after the
9 date of enactment of this Act, the Comptroller Gen-
10 eral shall submit to the appropriate committees of
11 Congress a report that describes the results of the
12 study.

13 (c) REPORTS OF COMMODITY FUTURES TRADING
14 COMMISSION.—

15 (1) IN GENERAL.—The Commission shall sub-
16 mit to Congress—

17 (A) not later than 60 days after the date
18 of enactment of this Act, a report that describes
19 in detail the actions the Commission has taken,
20 is taking, and intends to take to carry out this
21 subsection (including any recommended legisla-
22 tive changes that are necessary to carry out this
23 subsection); and

24 (B) not later than 45 days after the date
25 described in subparagraph (A) and every 45

1 days thereafter until the date of implementation
2 of this subsection, an update on the report re-
3 quired under subparagraph (A).

4 (2) **ADDITIONAL EMPLOYEES OR RESOURCES.—**

5 Not later than 60 days after the date of enactment
6 of this Act, the Commission shall submit to Con-
7 gress a report that describes the number of addi-
8 tional positions and resources that the Commission
9 determines to be necessary to carry out this sub-
10 section (including the specific duty of each addi-
11 tional employee).

12 **SEC. 16. EXPEDITED PROCEDURES.**

13 (a) **IN GENERAL.**—Subject to subsection (b), the
14 Commodity Futures Trading Commission (referred to in
15 this section as the “Commission”) shall use emergency
16 and expedited procedures (including any administrative or
17 other procedure as appropriate) to carry out this Act (in-
18 cluding the amendments made by this Act).

19 (b) **REPORT.**—If the Commission decides not to use
20 the procedures described in subsection (a) in a specific in-
21 stance, not later than 30 days after the date of the deci-
22 sion, the Commission shall submit to Congress a detailed
23 report that describes in each instance the reasons for not
24 using the procedures.

Calendar No. 882

110TH CONGRESS
2^D Session

S. 3268

A BILL

To amend the Commodity Exchange Act to prevent excessive price speculation with respect to energy commodities, and for other purposes.

JULY 16, 2008

Read the second time and placed on the Calendar